Supreme Court, U.S.
FILED
DEC 14 1985
JOSEPH F. SPANIOL, JR.
CLERK

85-1025

No. _____

IN THE

Supreme Court of the United States

October Term, 1985

JAMES S. WILLIAMS
T/A WILLIAMS ELECTRIC,

Petitioner,

v.

SCHOOL BOARD OF THE
CITY OF PITTSBURGH,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JAMES S. WILLIAMS
Petitioner
1531 Oberlin Street
Pittsburgh, PA 15206
(412) 241-7195
(412) 441-9771

116 P

QUESTIONS PRESENTED

1. Whether a party has been provided his constitutional rights by a court as commanded by the Constitution of the United States when a trial is in progress and the judge leaves the bench and goes to his office without calling a recess and thereafter rules on the case before him without the benefit of the transcription of the unheard testimony against the plaintiff in favor of a government agency that resulted in the loss of jobs, property and other valuable things by the plaintiff.

2. Whether a government agency charged with racial discrimination under the Fourteenth Amendment to the Constitution of the United States and civil rights violation under 42, USC 1983 and 42 USC 2000 who voluntarily admits all charges by brief, under the Federal Rules of Civil Procedure, Rule 12B6 after denial of motion thereunder,

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POINT I. It is clear that the Constitution of the United States and the Acts of Congress laws were passed to prevent discrimination against United States Citizens, one against another and by government agencies. There are no provisions in those laws that exempt or provide government agencies the right to discriminate or treat unequally black or white citizens in the performing of jobs fcr them, when the black or white citizen has

the same qualifications for that job, whether or not the government agency has rules set up to accomplish the same act of discrimination, because of the fact that the Acts U.S.C. 1983 and U.S.C. 2000E mandate that discrimination against blacks because of race is illegal as a matter of law.

No._____

In the

SUPREME COURT OF THE UNITED STATES

October Term 1985

JAMES S. WILLIAMS T/A WILLIAMS ELECTRIC,

Petitioner

v.

SCHOOL BOARD OF THE CITY OF PITTSBURGH,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

OPINION BELOW

A copy of the opinion of the United States Court of Appeals for the Third Circuit, rendered the 19th day of September, 1985 and the 28th day of August 1985, is annexed hereto as an appendix.

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CASES CITED:

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ID U.S. at 690

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AN ACT OF CONGRESS:

Civil Rights Act of
1871. Title 1983

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1964. Title 7

Fourteenth Amendment to the Constitution of the United States

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OTHER AUTHORITIES:

United States Constitution:

Fourteenth Amendment

JURISDICTION

A) The opinion and order was released February 11, 1985, by the United States District Court for the Western District of Pennsylvania No. 84-1083. The plaintiff filed Relief from Judgment February 19, 1985, the court denied Relief from Judgment on February 20, 1985, all herein annexed as part of the appendix.

It was the opinion of the court that,

1. Although the plaintiff who is black was treated different from a previous white contractor, the plaintiff failed to show he was adversely affected by the defendant's decision committing the acts of different treatment on September 22, 1982.

2. Although the plaintiff was the low bidder under a request for proposal by the defendant who awarded the contract to a white contractor with a higher bid, the plaintiff made a (prima facie) case of

racial discrimination, but the defendant offered a nondiscriminatory reason for its action.

3. The plaintiff was awarded a contract under a re-bid under Item 2 above (note after filing of a state suite) the defendant only awarded him $2,172.00 and decided to perform their own work, although the plaintiff did make out a prima facie case of racial discrimination, the defendant provided a legitimate nondiscriminatory reason for its action.

B) Notice of appeals filed before the district court on March 11, 1985 from said judgment to the Third Circuit Court of Appeals No. 85-3160, the Third Circuit Court of Appeals affirmed the district court judgment on August 28, 1985 and denied re-consideration on September 19, 1985, a copy of which is annexed hereto, as part of the appendix.

C) The jurisdiction to review the judgment in question by certiorari is conferred under 28 U.S.C. 1254 and 1257.

CONSTITUTIONAL PROVISIONS INVOLVED HEREIN, THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION ARE INVOLVED HEREIN.

So far as pertinent, the Fourteenth Amendment of the United States Constitution alleges:

> "No person shall be *** deprived of his life, liberty, or property, without due process of law."
>
> "Nor deny to any person within its jurisdiction the equal protection of the law."

STATEMENT OF THE CASE

1. This case, with all due respect to the honorable court system, shows that the plaintiff was denied his basic constitutional civil rights and the provision of laws passed by the acts of congress, by the trial court below, and a monetary granted government agency, the school board of the City of Pittsburgh. During the trial below, the defendant was under direct examination by the plaintiff, when suddenly without warning, the trial judge left the bench and returned to his office without calling a temporary recess and the trial continued without his presence. The plaintiff questioned this action to the court reporter, who ordered that the trial continue. This aspect of the trial was deleted from the court reporter's transcript. Common knowledge would tell a prudent man that a fair trial cannot be

conducted without the judge present, who must and did make a ruling in this matter without the benefit of the transcription of the unheard testimony by him against the plaintiff, which resulted in the loss of jobs and property by the plaintiff. The judge's ruling was filed February 11, 1985, the transcription of testimony was made on March 29, 1985, therefore it was impossible for the trial judge to provide a fair trial to the plaintiff as commanded by the Fourteenth Amendment to the Constitution of the United States, which commands that, no state may deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law. The plaintiff herein alleges the denial of the provision of the Fourteenth Amendment to the Constitution of the United States to him.

2. The plaintiff believes that there is a misunderstanding or a misuse of this court's rules for the orderly consideration of court cases by the trial court and the defendant's attorney.

The defendant in the trial court below admitted all allegation in the plaintiff's complaint by brief under the Federal Rules of Civil Procedure (FRCP) 12B6 after the denial by the trial court of the defendant's Motion to dismiss thereto. The defendant recovered under (FRCP) 56E and denied the plaintiff's allegations which were admitted by the defendant in FRCP 12B6, the defendant recovered under (FRCP) 56E because the trial court denied the plaintiff's Motion for a Summary Judgment under (FRCP) 56C, which requires specific and specified facts showing that there is a genuine issue for trial by an adverse party. The plaintiff here alleges that the (FRCP) rules do not

permit the voluntary admission of an act, to have a case dismissed and once denied by the court, permit the voluntary admission of an act to be withdrawn. The plaintiff further alleges that the trial court denied him the provision of the (FRCP) Rule 56C by not granting a Summary Judgment in his favor, when the action of the defendant was at issue under the Fourteenth Amendment to the Constitution of the United States and the Acts of Congress, 42 U.S.C. 1983 and 42 U.S.C. 2000E.

3. Each question herein is of equal importance, because here I believe that the congress' intent in passing laws against discrimination against Blacks did not exempt contracts or rules contained in contracts as a vehicle that could be used to treat black and white unequally with the same qualifications and expertise. The law forbids unequal treatment of black and white

based upon race, 42 U.S.C. 1983 and 42 U.S.C. 2000E. Making a prima facie case of racial discrimination against a party requires the defendant (a government agency) to produce overwhelming evidence for its action and not to overcome by frivolous claim of self government interest.

A. The government agency must first produce a legitimate non-discriminatory reason for its discriminatory action against the plaintiff.

B. The government agency then must produce a legitimate non-discriminatory reason why this action was necessary. The agency cannot rely on the fact that it is in a contract which permits them to treat a white and black contractor unequally in the administration of that contract as stated in this case. This case with the question of constitutional and civil rights contained herein, the trial court opinion and decision

was constitutionally flawed with its decision in favor of the defendant against the plaintiff because the defendant did not meet the requirements that a legitimate non-discriminatory reason must be submitted for its discriminatory action against the plaintiff, for only the first part was submitted as in Item (A) above and not the second part as in Item (B) herein.

If the decision below is allowed to stand, then Constitution Laws and the Acts of Congress Laws would simply be a hollow law of no meaningful effect.

4. This is a simple case made to sound complicated by the defendant and the court below.

A. The plaintiff by providing a bond and the low bid obtained an electrical maintenance contract from the defendant on June 24, 1982 held previously by a white contractor. On September 22, 1982, the defendant passed new rules that resulted in the different treatment to him than the white contractor, costing him money and time, among other things, that was not required of the white contractor, although the contract held by both was the same.

B. On December 6, 1983, the plaintiff was low bidder on a request for proposal by the defendant. Thereafter, the defendant

awarded the contract to the previous white contractor although his bid was higher than the plaintiff. The plaintiff therefore filed a case in state court against the defendant. The defendant in a spurious act, withdrew all bids and sent out for new ones which made moot the plaintiff's court case. The plaintiff had no choice but to take no further action in state court.

C. On January 26, 1984, the plaintiff was awarded a two-year contract with the defendant because the plaintiff was again low bidder as per the defendant's request for proposal. Thereafter, without warning, the defendant decided not to honor the contract as they had previously done with the prior white contractor, the previous white contraction having had the contract from 1980 to June 1982 and all of 1983.

D. The plaintiff herein incorporates the forbatem answer to the trial court opinion

contained in the court record and the defendant's Motion to Dismiss and the court ruling denying said Motion to Dismiss as part of this paragraph annexed as part of the appendix.

IN SUMMARY

The plaintiff was denied a fair trial and the provision of the Constitution of the United States and was discriminated against because of race illegally as a matter of law.

CONCLUSION

The petition for certiorari should be granted. This court should hold that the order and judgment below should be reversed on the grounds that the defendant failed to provide a legitimate non-discriminatory reason for its discriminatory action against the plaintiff, and all damages be awarded to the plaintiff as requested, or in the alternative, a new trial granted.

James S. Williams
for Petitioner

Dated December 12 1985

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing petition for a Writ of Certiorari has been mailed to all parties with an interest in this case who are required to be served, on December 12 1985.

Those so notified are:

Robert J. Stefanko, Esquire
School Board City of Pittsburgh
341 South Bellefield Ave.
Pittsburgh, PA 15213

James S. Williams
for the Petitioner

Dated December 12 1985

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES S. WILLIAMS t/a WILLIAMS ELECTRIC,	)	
Plaintiff,	)	
v.	)	No. 84-1083
SCHOOL BOARD CITY OF PITTSBURGH,	)	
Defendant	)	

MOTION TO DISMISS

The Defendant, The Board of Public Education of the School District of Pittsburgh, erroneously identified in the caption of the Plaintiff's Complaint as the "School Board City of Pittsburgh", by its undersigned counsel moves this Honorable Court as follows:

To dismiss the action in accordance with Federal Rule of Civil Procedure 12(b)(6) because the complaint fails to state a claim

against the defendant upon which relief can be granted.

Respectfully submitted,

_____

Robert J. Stefanko, Solicitor

Attorney for The Board of
Public Education
School District of Pittsburgh
341 South Bellefield Avenue
Pittsburgh, PA 15213
Phone: (412) 622-3780

DATE: May 15, 1984

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES S. WILLIAMS t/a WILLIAMS ELECTRIC,	)	
Plaintiff,	)	
v.	)	No. 84-1083
SCHOOL BOARD CITY OF PITTSBURGH,	)	
Defendant	)	

ORDER OF COURT

AND NOW, to-wit, this ____day of _____, 1984, IT IS ORDERED That the above action is dismissed at Plaintiff's cost.

_____
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing Motion to Dismiss upon the person below by depositing in the United States Mail, First Class, a true and correct copy of said Motion:

James S. Williams
1531 Oberlin Street
Pittsburgh, PA 15206

Robert J. Stefanko, Solicitor
Attorney for Defendant

Date: May 15, 1984

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES S. WILLIAMS t/a WILLIAMS ELECTRIC, Plaintiff	)	
vs	)	CIVIL ACTION NO. 84-1083
SCHOOL BOARD OF CITY OF PITTSBURGH, Defendant	)	

ORDER OF COURT

AND NOW, to-wit, this 21st day of May, 1984, upon consideration of the Motion to Dismiss filed in the above-styled case,

IT IS DIRECTED that the moving party file within ten (10) days from the date of this Order, a brief in support thereof, and that respondent file a brief in support of its position within twenty (20) days from the date of this Order. The motion will then be disposed of on the briefs or set down for argument as is appropriate.

No brief shall exceed twenty (20) pages.

Hubert I. Teitelbaum
Chief United States District Judge

cc: James S. William
1531 Oberlin St.
Pittsburgh, PA 15206

Robert Stefanko, Esq.
341 S. Bellefield Ave.
Pittsburgh, PA 15213

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES S. WILLIAMS t/a WILLIAMS ELECTRIC,	)	
Plaintiff,	)	
v.	)	No. 84-1083
SCHOOL BOARD CITY OF PITTSBURGH,	)	
Defendant.	)	

BRIEF IN SUPPORT OF DEFENDANTS
MOTION TO DISMISS PLAINTIFF'S COMPLAINT
UNDER F.R.C.P. 12(b)(6)

The Defendant, The Board of Public Education of the School District of Pittsburgh, erroneously identified in the caption of the Plaintiff's Complaint as the "School Board City of Pittsburgh", is the governing body of the School District of Pittsburgh. The district is the second largest of the 501 school districts in the Commonwealth of Pennsylvania. Because of this fact, the Board is responsible for the

operation and maintenance of 99 buildings throughout the district. It discharges this responsibility by using a combination of employee tradesmen and outside, independent contractors. The plaintiff, Mr. Williams, is one of the latter.

Mr. Williams complains that at its legislative meeting of December 21, 1983, the School Board "illegally" rejected all bids on the electrical maintenance contract work upon which he was one of the bidders. (2-2) Secondly, he complains that the School Board "wrote a new policy for small contract procedure" and illegally applied this policy to Mr. Williams' contract dated June 24, 1982, with the School Board. (2-3) Finally, he complains that the School Board has breached its contract with him dated February 26, 1984, because he is not receiving as much work as the previous contractor who held the electrical

maintenance contract before he did. All of these actions are alleged to be done because of Mr. Williams' race, which is black.

ISSUES

1. WHETHER THE BOARD OF PUBLIC EDUCATION OF THE SCHOOL DISTRICT OF PITTSBURGH AT ITS LEGISLATIVE MEETING OF DECEMBER 21, 1983, ILLEGALLY REJECTED ALL BIDS TO PERFORM ELECTRICAL MAINTENANCE WORK FOR THE SCHOOL DISTRICT?

2. WHETHER THE SCHOOL BOARD'S POLICY FOR SMALL CONTRACTS PROCEDURE WAS ILLEGALLY APPLIED TO THE BOARD'S CONTRACT WITH THE PLAINTIFF DATED JUNE 24, 1982, AND COVERING THE PERIOD JULY 1, 1982 TO DECEMBER 31, 1982?

3. WHETHER THE SCHOOL BOARD BREACHED ITS CONTRACT WITH JAMES WILLIAMS DATED JANUARY 26, 1984, BY NOT PROVIDING MR. WILLIAMS WITH THE QUANTITY OF WORK THAT HE HAS DETERMINED IS APPROPRIATE.

4. WHETHER ANY OF THE ACTIONS COMPLAINED OF IN MR. WILLIAMS' COMPLAINT ARE BASED UPON HIS RACE?

RATIONALE

1. WHETHER THE BOARD OF PUBLIC EDUCATION OF THE SCHOOL DISTRICT OF PITTSBURGH AT ITS LEGISLATIVE MEETING OF DECEMBER 21, 1983, ILLEGALLY REJECTED ALL BIDS TO PERFORM ELECTRICAL MAINTENANCE WORK FOR THE SCHOOL DISTRICT?

Answer: No.

An examination of paragraph 3 of the School Board's Bid Conditions, which are appended to the Plaintiff's Complaint as Exhibit A, reveals the following language.

> "3. The Pittsburgh board of Public Education reserves the right to reject any or all bids, and to accept or reject any item or group of items for which Bid is submitted."

Paragraph 9 of those same conditions read as follows:

> "9. REJECTION OF BIDS - The Pittsburgh Board of Public Education reserves the right to reject any or all bids if it deems it to the interest of the Pittsburgh Board of Public Education to do so."

Since the School Board reserved this right of rejection of all or parts of bids and made this condition known to Mr. Williams before he submitted a bid, the

School Board's exercise of this right cannot be the basis of this action. Furthermore, paragraph 2-2 of the Complaint states that the Board rejected "all bids"; therefore, it is obvious that Mr. Williams' bid was not rejected because of his race since both black and white bidders were affected equally.

2. WHETHER THE SCHOOL BOARD'S POLICY FOR SMALL CONTRACTS PROCEDURE WAS ILLEGALLY APPLIED TO THE BOARD'S CONTRACT WITH THE PLAINTIFF DATED JUNE 24, 1982, AND COVERING THE PERIOD JULY 1, 1982 TO DECEMBER 31, 1982?

Answer: No.

Plaintiff's Exhibit 2, entitled "Small Contract Procedure" sets forth the process for the School Board's handling of maintenance contracts where the cost of the work is either below $1,500 or between $1,500 and $4,000. These dollar limits are dictated by 7-751 of the Public School Code of 1949, as amended. (24 P.S. 07-751.)

The School Board did not adversely affect Mr. Williams' maintenance contract by the employment of this procedure for two reasons: (I) Paragraph II of the bid conditions (Plaintiff's Exhibit 3) provides that the amount of work given to the contractor shall be at the sole discretion of the Director of the Facilities Division; and (2) the School Board "may enter into another Contract or Contracts for specific work for which Plans and/or Specifications are separately provided."

The School Board's exercise of rights

that it reserved and made known to the contractor before the contract was entered into cannot be made the basis of a legal action against the Board.

3. WHETHER THE SCHOOL BOARD BREACHED ITS CONTRACT WITH JAMES WILLIAMS DATED JANUARY 26, 1984, BY NOT PROVIDING MR. WILLIAMS WITH THE QUANTITY OF WORK THAT HE HAS DETERMINED IS APPROPRIATE.

Answer: No.

The nature of the contract that the Plaintiff has with the School Board is such that the contractor is used only when the Board's staff tradesmen cannot perform the work or when a small contract cannot be let to have the work done for the least cost to the Board. There is no guaranteed amount of work that the Board must award to the contractor.

Paragraph II of the Board's Bid Conditions make this clear, and Plaintiff's prior experience with the Board indicates that he is fully aware of this fact.

Finally, at this date, the parties are only five (5) months into a 24-month contract. It is premature to conclude that a contract has been breached when it still has 19 months to operate. For these reasons, this allegation is without merit and cannot be the basis of this litigation.

4. WHETHER ANY OF THE ACTIONS COMPLAINED OF IN MR. WILLIAMS' COMPLAINT ARE BASED UPON HIS RACE?

Answer: No.

All of the actions of which the Plaintiff complains are based upon rights reserved by the School Board and are in no way connected with the Plaintiff's race.

The School Board has a written policy, involving minority contractors, which is a part of all specifications that are

distributed to the public when bidding is advertised. Mr. Williams has not included this in his exhibits; therefore, it is included as an attachment to the Defendant's brief.

Reference to page two of the Small Contract Procedure (Plaintiff's Exhibit 2), entitled "Rotation" indicates in the second paragraph that:

> "One of three small contracts under $1,500 will be awarded to a minority business contractor."

In the third paragraph of that policy referring to work between $1,500 an $4,000 states, again:

> "One of every three bid solicitations will be sent to minority contractors where two or more minority contractors are available. Minority contractors should also be solicited on the other two contract awards, if possible."

Finally, the fourth paragraph provides:

> "Contracts between $4,000 and $5,000 require Board action and in these cases the District Coordinators Nor design personnel) should indicate three contractors, and a review by the Facilities Planning Manager who will add at least one minority contractor to the list, if possible."

All of these factors indicate that the policy of the School Board is to support and encourage minority contractors to engage in business with it, and is directly opposite to the allegations of racial discrimination raised by the Plaintiff.

For the reasons set forth above, the complaint should be dismissed.

Respectfully submitted,

Robert J. Stefanko, Solicitor

Attorney for
The Board of Public Education of
The School District of Pittsburgh
341 South Bellefield Avenue
Pittsburgh, PA 15213

Phone: 412 622-3780

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES S. WILLIAMS, t/a WILLIAMS ELECTRIC, PLAINTIFF	)	
v.	)	Civil Action No. 84-1083
SCHOOL BOARD OF CITY OF PITTSBURGH DEFENDANT.	)	

MEMORANDUM OPINION

II. James WIlliams, black pro se litigant, has made the following allegations in his complaint:

Williams was awarded a contract by the School Board on June 24, 1982 to provide electrical maintenance service. The School Board subsequently instituted a new procedure for awarding contracts on September 22, 1982, thereby in effect terminating the contract. This new procedure had never been applied to previous contractors who were white.

Then, although Williams was the lowest bidder on a contract to provide electrical maintenance service, the School Board on December 6, 1983 nonetheless awarded the contract to a white electrical contractor. The School Board subsequently rejected all bids on December 21, 1983 and requested new bids after Williams filed suit in state court.

Finally, Williams was awarded a contract by the School Board on January 6, 1984 to provide electrical maintenance service. Williams then was notified on April 24, 1984 that he would not be given all the work. White contractors who held previous contracts had been given all the work to perform.

According to Williams, the actions taken by the School Board on September 22, 1982, on December 21, 1983, and on April 24, 1984 constitute racial discrimination in violation of 42 U.S.C. 2000 et seq.

II. Presently before the Court is a Rule 12 (b) (6) motion by the School Board to dismiss this action for failure to state a claim upon which relief may be granted. in support thereof, the School Board has attempted to show that the actions taken on the dates in question were not "illegal".

In support of the denial that it acted "illegally" on September 22, 1982, the School Board cites Paragraph 11 of the Bid Conditions, which states that the amount of work given to a contractor shall be at the School Board's discretion, and which further provides that it may enter into other contracts for which plans are separately provided.

In support of its denial that it acted illegally on December 21, 1983, the School Board cites Paragraphs 3 and 9 of the Bid Conditions. In Paragraph 3, the School reserved the right to reject all bids or parts of bids. In Paragraph 9, the School Board reserved the right to reject wall bids, if it deemed it in the interest of the Board to do so.

Finally, in support of its denial that it acted illegally on April 24, 1984, the

School Board again cites Paragraph 11 of the Bid Conditions and further suggests that the action is premature since the contract has almost 19 months to run.

III. The School Board's 12(b) (6) motion to dismiss will be denied for reasons set forth below.

When considering a 12(b) (6) motion to dismiss, the complaint should be construed in the light most favorable to the plaintiff and the allegations contained therein should be taken as true. Mahone v. Waddle, 564 F.2d 1018, 1021 (3d Cir. 1977). The action should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The task of the Court considering such a motion is to determine whether plaintiff could prevail if

the facts alleged in the complaint were borne out at a trial on the merits. Mahone, 564 F. 2d at 1021.

It cannot be said beyond doubt that Williams could prove no set of facts in support of his claim that the above actions by the School Board constituted racial discrimination in violation of 42 U.S.C. 1983 and 2000E et seq. The "facts" cited by the School Board certainly do not show that Williams cannot make out a claim of racial discrimination. They show, at most, only that the School Board committed no contractual breach when it acted as it did. The substance of Williams' complaint, however, is that the School Board acted as it did for racial reasons. Williams is not claiming that the School Board's actions constituted breach of contract.

An appropriate order shall issue.

Dated: September 6, 1984.

Hubert I. Teitelbaum
Chief United States District Judge

ORDER

AND NOW, September 6, 1984, in accordance with the foregoing memorandum opinion, IT IS HEREBY ORDERED that the defendant's Rule 12 (b) (6) motion to dismiss is denied.

Hubert I. Teitelbaum
Chief United States District Judge

CC: James S. Williams
1531 Oberlin Street
Pittsburgh, PA 15206

Robert J. Stefanko, Solicitor
Attorney for The Board
of Public Education
School District of Pittsburgh
341 South Bellefield Avenue
Pittsburgh, PA 15213

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES S. WILLIAMS, t/a WILLIAMS ELECTRIC, PLAINTIFF	)	
v.	)	Civil Action No. 84-1083
SCHOOL BOARD OF CITY OF PITTSBURGH, DEFENDANT.	)	

MOTION FOR A SUMMARY JUDGMENT

And now comes the plaintiff James S. Williams T/A Williams Electric by and through James S. Williams and files the following Motion For A Summary Judgment under the Federal Rules of Civil Procedure No. 56(A) and (C).

1. There is no genuine issue as to any material fact and the plaintiff is entitled to a judgment as a matter of law.
2. Under the Rule 12 (B), the defendant failed to respond to the plaintiff's

allegation of racial discrimination and has asserted every defense due them at their option of using Rule 12 (B) 6.

Wherefore, the plaintiff requests this honorable court to grant him a Summary Judgment in his favor.

DATED September 17, 1984

James S. Williams
Plaintiff

cc/Robert J. Stefanko Esquire
School Board City of Pittsburgh
314 South Bellefield Avenue
Pittsburgh, PA 15213

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion For A Summary Judgment has been mailed to the School Board City of Pittsburgh Attorney by registered mail, return receipt requested on September 17, 1984

DATE September 17, 1984

James S. Williams
Plaintiff

cc/Robert J. Stefanko, Esquire
School Board City of Pittsburgh
314 South Bellefield Avenue
Pittsburgh, PA 15213

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES S. WILLIAMS t/a WILLIAMS ELECTRIC,	)	
PLAINTIFF,	)	
v.	)	No. 84-1083
SCHOOL BOARD CITY OF PITTSBURGH,	)	
DEFENDANT.	)	

ANSWER TO COMPLAINT

The Defendant, The Board of Public Education of the School District of Pittsburgh, erroneously identified in the caption of the Plaintiff's Complaint as the "School Board City of Pittsburgh", hereinafter referred to as School District, by its attorney, Robert J. Stefanko, Solicitor, files this Answer to the Plaintiff's Complaint.

1-1 Jurisdiction of this Honorable Court is admitted.

2-1 The allegations of fact set forth in the first subparagraph of 2-1 are admitted, and the allegations set forth in the second subparagraph of 2-1 are denied.

2-2 The allegations set forth in paragraph 2-2 are denied.

2-3 The allegations set forth in paragraph 2-3 are denied.

3-1 The School District is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph since the means of proof are exclusively within the control of the plaintiff, an adverse party; therefore, the averments are denied and strict proof thereof is demanded at the time of trial.

3-1A The averments of this paragraph are neither admitted nor denied since they are a prayer for relief.

3-2 The School District is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph since the means of proof are exclusively within the control of the plaintiff, an adverse party; therefore, the averments are denied

and strict proof thereof is demanded at the time of trial.

3-2A The averments of this paragraph are neither admitted nor denied since they are a prayer for relief.

3-3 The School District is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph since the means of proof are exclusively within the control of the plaintiff, an adverse party; therefore, the averments are denied and strict proof thereof is demanded at the time of trial.

3-3A The averments of this paragraph are neither admitted nor denied since they are a prayer for relief.

3-3B The averments of this paragraph are neither admitted nor denied since they are a prayer for relief.

PREVIOUS LAWSUITS

I. The School District neither admits nor denies the allegations contained in this paragraph since they set forth only historical data which is irrelevant to this action.

Robert J. Stefanko
Attorney for Defendant

School District of Pittsburgh
341 South Bellefield Avenue
Pittsburgh, Pennsylvania 15213

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing Answer to Plaintiff's Complaint upon the person below by depositing in the United States Mail, First Class, a true and correct copy of said Answer:

James S. Williams
1531 Oberlin Street
Pittsburgh, PA 15206

Robert J. Stefanko, Solicitor
Attorney for Defendant

Date: September 13, 1984

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF ALLEGHENY)

Before me, the undersigned authority, a notary public in and for said Commonwealth and County, personally appeared ALDO COLAUTTI, who, being duly sworn according to law, deposes and says that he is Assistant Secretary for The Board of Public Education of the School District of Pittsburgh; that he is authorized to and files the foregoing Answer to Plaintiff's Complaint on behalf of the School District; and that the averments of fact contained therein which are within his personal knowledge are true, and as to those based upon information received from others, he believes them to be true.

_____
Aldo Colautti

Sworn to and subscribed before me

this 11th day of September, 1984.

_____

Ruth S. Wintner
Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES S. WILLIAMS, t/a WILLIAMS ELECTRIC,	)	
PLAINTIFF	)	
v.	)	Civil Action No. 84-1083
SCHOOL BOARD OF CITY	)	
DEFENDANT	)	

MOTION TO DISMISS THE DEFENDANT'S ANSWER TO THE COMPLAINT

And now comes the plaintiff James S. Williams T/A Williams Electric, by and through James S. Williams and files the following Motion to Dismiss the Defendant's Answer To The Complaint filed on September 13, 1984.

1. The defendant has presented contrary response in the above filing to those presented in their motion to dismiss filing.

2. The action taken in Item (1) is a violation of the Federal Rule No. (11) and Rule 12 (B) 6 because the defendant used these rules for the purpose not intended.

Wherefore, the plaintiff requests this honorable court to dismiss the Defendant's Answer To The Complaint filed on September 13, 1984.

DATED September 17, 1984

James S. Williams
Plaintiff

cc/Robert J. Stefanko, Esquire
School Board City of Pittsburgh
314 South Bellefield Avenue
Pittsburgh, PA 15213

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion To Dismiss Defendant's Answer to Complaint has been mailed to the School Board City of Pittsburgh Attorney by registered mail, return receipt requested on September 17, 1984.

DATED September 17, 1984 _____
James S. Williams
Plaintiff

cc/Robert J. Stefanko, Esquire
School Board City of Pittsburgh
314 South Bellefield Avenue
Pittsburgh, PA 15213

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES S. WILLIAMS, t/a WILLIAMS ELECTRIC,	)	
PLAINTIFF	)	
v.	)	CIVIL ACTION
	)	NO. 84-1083
SCHOOL BOARD OF CITY	)	
DEFENDANT	)	

ORDER

AND NOW, September 21, 1984, the Court having given full consideration to the matter, IT IS HEREBY ORDERED that plaintiff's motion for summary judgment is denied. IT IS FURTHER ORDERED that plaintiff's motion to dismiss defendant's answer to the complaint is denied.

Hubert I. Teitelbaum
Chief United States District Judge

cc: James S. Williams
1531 Oberlin Street
Pittsburgh, PA 15206

Robert J. Stefanko, Esq.
School Board, City of Pittsburgh
314 South Bellefield Avenue
Pittsburgh, PA 15213

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES S. WILLIAMS, t/a WILLIAMS ELECTRIC, Plaintiff	)	
v.	)	Civil Action No. 84-1083
SCHOOL BOARD, CITY OF PITTSBURGH, Defendant.	)	

MEMORANDUM OPINION

I.

James Williams brought this action pursuant to 42 U.S.C. 1983 and 42 U.S.C. 2000e (Title VII), claiming disparate treatment on account of his race with respect to three contracts with the School Board for electrical maintenance work.

A nonjury trial in this matter was conducted. For reasons set forth below, judgment will be entered for the defendant and against the plaintiff.

II.

As with any civil litigation, the plaintiff has the burden at all times of proving racial discrimination.

In order to recover under 42 U.S.C. 1983, plaintiff must prove two things. First, he must prove that defendant has deprived him of a federal right. In this particular case, Plaintiff must prove that the actions of the School Board deprived him of equal protection as guaranteed by the Fourteenth Amendment. Second, plaintiff must prove that this deprivation occurred "under color of law." See Gomez v. Toledo, 446 U.S. 635, 640 (1980).

Proof of a violation of the Equal Protection Clause requires a showing of racially discriminatory intent or purpose. See Arlington Heights v. Metro. Housing Corp., 429 U.S. 252, 265 (1977). One need not, however, show that a challenged action was based exclusively on a racially discriminatory animus. Rather, one need only show that such discriminatory animus was a "motivating factor" in the action taken. Arlington Heights, 429 U.S. at 265-66.

The Court must engage in a three-stage analysis of the evidence when evaluating Title VII claim.

In order for a plaintiff to recover under Title VII, the court first must find that plaintiff has made out a prima facie case of racial discrimination. As used in the Title VII context, a prima facie case involves establishment of a legally mandatory, rebuttable presumption of racial discrimination.

See Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 254 n. 7(1981). Failure by the plaintiff to make out a prima facie case will result in judgment for defendant as to such claim.

Second, if the court determines that plaintiff has made out a prima facie case, the court then must consider the defendant's explanation, if any, for the presumptive discrimination. In a disparate treatment case, the defendant must introduce admissible evidence of a legitimate, nondiscriminatory reason for its action. Defendant need not, however, show that it was actually motivated by the proferred reason. See Burdine, 450 U.S. at 254-55. At that point, the presumption of discrimination drops from the case and the court considers the ultimate issue: whether the actions in question were made on the basis of race. See

U.S.P.S. board of Governors v. Aikens, 460 U.S. 711, __, 75 L.ED.2d 403, 410 (1983).

The "factual inquiry" in a Title VII action is "whether the defendant intentionally discriminated against the plaintiff." Burdine, 450 U.S. at 253. In other words, did the defendant "treat some people less favorably than others because of their race, color, religion, sex, or national origin.: International Brotherhood of teamsters v. U.S., 324, 355 n. 15 (1977).

Finally, even if the defendant has produced evidence raising a genuine issue of fact as to whether it was motivated by a legitimate, nondiscriminatory reason, the plaintiff can still prevail by showing either that a discriminatory reason more likely motivated the defendant or that defendant's proferred explanation is a pretext. See Burdine, 450 U.S. at 256.

There is no single set of items plaintiff

must show in order to make out a prima facie case. What must be shown depends on the specific case. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 n. 13 (1973). Likewise, what the parties must come forward with in satisfying their burdens in the second and third stages of analysis also depends on the specific case.

Plaintiff is a black, independent electrical contractor who does business as Williams Electric. Defendant is the governing body of the School District of Pittsburgh and is responsible for maintenance of the buildings comprising the School District. Williams Electric is one of the Independent contractors with whom defendant has contracted on a number of occasions to perform electrical maintenance work. Three such contracts are at issue here.

(A.) Defendant awarded a contract to Williams Electric on June 24 1982 to perform electrical maintenance work for the period from July 1, 1982 to December 1, 1982. On September 22, 1982, the defendant refused to award any more work under the contract to Williams Electric. It instead required Williams Electric to bid separately each job.

The amount to be paid under the contract in question was not to exceed $30,000. Of that amount, the defendant paid Williams Electric $29,147 for work done, approximately 97% of the amount permitted. All independent contractors are notified that they will be called on an "as needed" basis and that there is no guarantee that they in fact will perform all of the work awarded under the contract.

Plaintiff has failed to make out a prima facie case of racial discrimination in violation of 42 U.S.C. 2000e. Although plaintiff did show that he was a member of a protected group and was qualified to perform the work in question, he failed to show that he was adversely affected by the defendant's decision of September 22, 1982.

In addition, plaintiff failed to prove that a racially discriminatory animus was a motivating factor in the defendant's

decision on September 22, 1983. It follows therefore that plaintiff also has failed to establish that the action in question was in violation of 42 U.S.C. 1983.

(B.) Defendant opened bids for an electrical maintenance contract for 1984-1985 on December 6, 1983. The bidding documents drafted by the defendant instructed bidders to include in their bids hourly rates for regular time and hourly rates for overtime. Plaintiff was the lowest bidder.

On December 14, 1983, the contract was tentatively awarded to Vern's Electric, a white independent electrical contractor. Then, on December 21, 1983, defendant rejected all bids and asked electrical contractors to re-bid, this time deleting all hourly rates for overtime and including only hourly rates for regular time.

The preponderance of the evidence

indicates that the only reason the defendant had for not accepting plaintiff's low bid on December 6, 1983 was that an error had been made in the original bidding documents. Specifically, they erroneously instructed all bidders to include a quotation of an hourly rate for overtime when in fact the defendant intended to award the contract only upon the basis of the hourly rate for regular time.

Although plaintiff did make a a prima facie case of racial discrimination in violation of 42 U.S.C. 2000e, the defendant offered a nondiscriminatory reason for its action. Plaintiff did not offer any proof that this proffered reason was a pretext or that a discriminatory reason more likely motivated the defendant. It follows, therefore, that plaintiff has failed to prove a violation of 42 U.S.C. 2000e.

Also, plaintiff has failed to prove that the action in question was in violation of 42 U.S.C. 1983. In failing to prove that racial animus was a motivating factor in the action taken by the defendant, plaintiff has failed to prove that he was deprived of equal protection.

(C.) On January 26, 1984, the defendant awarded the electrical maintenance contract to plaintiff for 1984-1985. The amount paid under the contract was not to exceed $35,000

for each year. As of October 1984, plaintiff had been awarded only $2,172 of work under the contract.

In addition to the plaintiff, the defendant also has contracted with 15 other independent contractors to perform other than electrical maintenance work. The majority of those other independent contractors are white. All 16 independent contractors, including plaintiff, have been awarded significantly less work under their contracts than had been awarded in the past. The reason for this is that the School Board decided that more maintenance work should be done by the School District's employee craftsmen and less by independent contracts.

Although plaintiff did make out a prima facie case of racial discrimination in this instance, the defendant provided a legitimate, nondiscriminatory reason for awarding only $2,172 worth of work. Plaintiff did not offer any evidence showing that a discriminatory reason more likely motivated the defendant or that defendant's proferred explanation was a pretext. It follows therefore that plaintiff has failed to prove that the action of the defendant constituted a violation of 42 U.S.C. 2000e.

Also, plaintiff has failed to prove that the action in question was a violation of 42 U.S.C. 1983. In failing to prove that racial animus was a motivating factor in the action taken, plaintiff has failed to prove that he was deprived of equal protection.

The foregoing constitute findings of fact and conclusions of law require by

Fed.R.Civ.P. 52(a).

An appropriate order will issue.

Dated: February 11, 1985.

Hubert I. Teitelbaum
Chief United States District Judge

ORDER

AND NOW, February 11, 1985, in accordance with the foregoing Memorandum Opinion, IT IS HEREBY ORDERED that judgment is entered for the defendant and against the plaintiff.

Hubert I. Teitelbaum
Chief United States District Judge

cc: James S. Williams
1531 Oberlin Street
Pittsburgh, PA 15206

Robert Stefanko, Esq.
341 S. Bellefield Avenue
Pittsburgh, PA 15213

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES S. WILLIAMS, t/a WILLIAMS ELECTRIC Plaintiff	)	
v.	)	Civil Action No. 84-1083
SCHOOL BOARD, CITY OF PITTSBURGH, Defendant	)	

ORDER

AND NOW, February 20, 1985, the Court having given full consideration to the matter, IT IS HEREBY ORDERED that plaintiff's Motion for Relief from Judgment and Order of the Court or in the Alternative, Reconsideration is denied.

Hubert I. Teitelbaum
Chief United States DIstrict Judge

cc: James S. Williams
1531 Oberlin Street
Pittsburgh, PA 15206

Robert Stefanko, Esq.
341 S. Bellefield Avenue
Pittsburgh, PA 15213

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES S. WILLIAMS, t/a WILLIAMS ELECTRIC, Plaintiff	)	
v.	)	Civil Action No.
SCHOOL BOARD, CITY OF PITTSBURGH, Defendant.	)	

NOTICE OF APPEAL TO THE U.S. COURT OF APPEALS 3RD CIRCUIT

AND NOW COMES, the plaintiff, James S. Williams t/a Williams Electric by and through James S. Williams under the Federal Rules of Appellate Procedure, Rules No. 3 and 4 and files this notice of appeal from this court's opinion and order of February 11, 1985 and February 20, 1985 in this case against the plaintiff for the following reasons:

1. The finding and conclusion are contrary to the evidence.
2. The finding and conclusion are unsupported by the evidence.
4. The court, because of Item 3, did not understand the facts presented to it or disregarded the facts presented to it by the plaintiff, by the plaintiff's documents and testimony by board members, Neiser and Dr. Curtis

Walker, including documents submitted by board member Neiser, among other things.

5. The plaintiff's Motion for Relief from Judgement and Order of the court or in the alternative, reconsideration, is herein incorporated as Item No. 5 (see attached) as one of the plaintiff's reasons for appeal.

6. In ruling against the plaintiff, the court denied the constitutional rights the law guarantees to U.S. citizens.

   A. Article 5 guarantees no person may be deprived of property without due process of law, which the court denied.
   B. Article 14 guarantees equal protection of the laws, among other things, including privileges contained therein, which the court denied.

7. The court denied the provision of laws to the plaintiff codified as 42.U.S.C. 1983 and 42. U.S.C. 2000E, the right to be free from discrimination and equal treatment of U.S. citizens by the government and its agencies.

Wherefore, for the reasons above, the plaintiff herewith submits to this honorable court its Notice of Appeal.

_____

James S. Williams
Plaintiff pro se.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within notice of appeal has been served upon Robert J. Stefanko, Esquire, attorney for the defendant by certified mail this 11 day of March 1985.

James S. Williams
Plaintiff pro se.

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JAMES S. WILLIAMS t/a WILLIAMS ELECTRIC,	)	
plaintiff-Appellant	)	No. 85,3160
vs.	)	
SCHOOL BOARD CITY OF PITTSBURGH,	)	
Defendant-Appellee	)	

MOTION TO REJECT NON CONFORMING PAPERS SUBMITTED BY THE APPELLEE, AN APPENDIX

And now comes the appellant James S. Williams t/a Williams Electric by and through James S. Williams and requests the follwoign motion be considered.

A. That the appellee's reply brief non-conforming papers in the above matter be rejected under this court, Rules 21 B4 and the Federal rules of appel-

late Procedure, Rule 28 including any and all other rules of this court and the Federal Rules of Appellate Procedure and if appropriate, dismissal under Kushner v Winterthur Swiss Insurance Company, 620 F2D 404 (3rd cir. 1980) and rule in favor of the appellant in this case.

B. The appellee submitted appendix material without leave of this court obtained by a formal motion.

C. The appellee submitted appendix material to this court already submitted to this court by the appellant with a copy to the appellee.

D. The appendix material submitted by the appellee permits the appellee to submit reference to it without specific reference to the plaintiff's brief to this court bypassing Rule 28-3, Subdivision E of the Federal

Rules of Appellate Procedure requirement.

E. The appellee in submitting appendix material indicates that the appendix material was not sent to them by the appellant as certified by the appellant which is false and without foundation (emphasis added) thereby submitting to the court the question of the credibility and honesty of the appellant. The appendix material referred to in this motion is the transcript of the proceeding in the court below, submitted to the appellee by the appellant with his brief in this case.

Wherefore, for the reasons above the appellant requests this honorable court to reject the non-conforming papers submitted by the appellee and take any other action against the appellee this court rules appro-

priate to maintain the equal requirement of both parties in the filing of documents before this court.

Dated May 31, 1985

James S Williams pro se

cc/Robert J. Stefanko, Esquire
Attorney for Defendant
341 South Bellefield Ave.
Pittsburgh, Penna. 15213

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Motion to Reject Non-Conforming Papers Submitted By The Appellee, An Appendix was served upon Robert J. Stefanko, Esquire, attorney for the defendant by certified mail on June 1, 1985.

James S. Williams pro se

UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

No. 85-3160 June 10, 1985
James S. Williams t/a Williams Electric,
Appellant

vs.

School Board of City of Pittsburgh

(W.D. D.C. Civil 84-1083)

To: CLERK.

1. Motion by appellant to reject non-conforming papers submitted by the appellee, an appendix, which the Court may wish to treat as a motion to strike portions of appellee's brief and appendix,

in the above-entitled case.

Respectfully,

Valerie Young
Deputy Clerk

VY

The foregoing Motion by appellant is denied. The appellee's brief conforms to the rules of this Court. The appellee's appendix will not be filed but will be received for the information of the Court only. It is noted that the appellee did not seek leave of the Court to file the appendix and that the appendix contains only materials already reproduced in the appellant's appendix.

For the Court,

Sally Mrvos
Clerk

Dated: June 10, 1985
vy/cc RJS
JSW

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JAMES S. WILLIAMS t/a WILLIAMS ELECTRIC,	)	
Plaintiff - Appellant	)	No. 85,3160
vs.	)	
SCHOOL BOARD CITY OF PITTSBURGH	)	
Defendant - Appellee	)	

SUPPLEMENTAL REPLY BRIEF

And now comes the appellant, James S. Williams t/a Williams Electric by and through James S. Williams and files this Supplemental Reply Brief for the following reasons:

1. The appellee defendant in its brief for appellee's Statement of Facts, Third Paragraph, Page 4 has submitted with knowledge, false statements to the court not contained anywhere else in the trial court below.
2. The appellee defendant alleges the

payment of $29,147.00 by a date certain, IE. September 22, 1982 for their reason for refusing to award the appellant any more work after that date, under a contract with the appellant that covers a period of July 1, 1982 to December 31, 1982 with a limit of $30,000.00 noted in appellee's Statement of Facts, Paragraph 2, Page 4.

3. The appellee defendant's statement of making said payment of $29,147.00 to the appellant by September 22, 1982 is absolutely false and without foundation (emphasis added) with the full knowledge that the statement is false by the appellee defendant because no such payment was made and they cannot produce cancelled checks to show such payments, when they do not exist.

4. The payment to the appellant for all

work of all kinds performed for the appellee was less than $10,000.00 from July 1, 1982 to September 22, 1982.

5. False statements by the appellee defendant are common in this case among other things, which I believe is a very uncommon act for a party to do before a court of law. Put another way, the appellant would fear and expect the full weight of the court if I submitted false statements to the court with the knowledge that the statements were false.

James S. Williams pro-se

DATED July 1, 1985

cc/Robert J. Stefanko, Esquire
Attorney for Defendant
341 South Bellefield Ave.
Pittsburgh, Penna. 15213

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE SUPPLEMENTAL REPLY BRIEF WAS SERVED UPON ROBERT J. STEFANKO, ESQUIRE ATTORNEY FOR THE APPELLEE DEFENDANT BY CERTIFIED MAIL ON JULY 2 1985.

James S. Williams pro-se

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

July 5, 1985

No. 85-3160

JAMES S. WILLIAMS T/A
WILLIAMS ELECTRIC, Appellant

vs.

SCHOOL BOARD OF CITY OF PITTSBURGH
(W.D.Pa. Civil 84-1083)

Present: WEIS, HIGGINBOTHAM and ROSENN,
Circuit Judges.

1. Appellant's motion for leave to file a supplemental reply brief,

in the above-entitled case listed for disposition on the merits on Tuesday, August 6, 1985.

Respectfully,

Deputy Clerk 7-3080

enc.
vy
P.S. Supplemental reply brief received 7/5/85 - attached.

The foregoing Motion is granted

By the Court,

_____

Weis
Judge

Dated: July 12, 1985
vy/cc Mr. James S. Williams
Robert J. Stefanko, Esq.

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JAMES S. WILLIAMS t/a WILLIAMS ELECTRIC, Plaintiff-Appellant	)	No. 85,3160
vs.	)	
SCHOOL BOARD CITY OF PITTSBURGH, Defendant - Appellee	)	

SUPPLEMENTAL REPLY BRIEF

And now comes the appellant, James S. Williams t/a Williams Electric by and through James S. Williams and files this Supplemental Reply Brief for the following reasons:

1. The appellee defendant in its brief for appellee's Statement of Facts, Third Paragraph, Page 4 has submitted with knowledge, false statements to the court not contained anywhere else in the trial court below.

2. The appellee defendant alleges the payment of $29,147.00 by a date certain, IE. September 22 1982 for their reason for refusing to award the appellant any more work after that date, under a contract with the appellant that covers a period of July 1, 1982 to December 31, 1982 with a limit of $30,000.00 noted in appellee's Statement of Facts, Paragraph 2, Page 4.

3. The appellee defendant's statement of making said payment of $29,147.00 to the appellant by September 22, 1982 is absolutely false and without foundation (emphasis added) with the full knowledge that the statement is false by the appellee defendant because no such payment was made and they cannot produce cancelled checks to show payments, when they do not exist.

4. The payment to the appellant for all work of all kinds performed for the appellee was less than $10,000.00 from July 1, 1982 to September 22, 1982.

5. False statements by the appellee defendant are common in this case among other things, which I believe is a very uncommon act for a party to do before a court of law. Put another way, the appellant would fear and expect the full weight fo the court if I submitted false statements to the court with the knowledge that the statements were false.

James S. Williams pro-se

DATED July 1, 1985

cc/Robert J. Stefanko, Esquire
Attorney for Defendant
341 South Bellefield Avenue
Pittsburgh, Penna. 15213

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE SUPPLEMENTAL REPLY BRIEF WAS SERVED UPON ROBERT J. STEFANKO, ESQUIRE ATTORNEY FOR THE APPELLEE DEFENDANT BY CERTIFIED MAIL ON July 2 1985.

James S. Williams pro-se

OFFICE OF THE CLERK
SALLY MRVOS
CLERK
Telephone
215-597-2995
UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA 19196-1790

July 26,1985

Mr. James S. Williams
1531 Oberlin Street
Pittsburgh, PA 15206

Robert J. Stefanko, Esquire
The Board of Public Education of
the School District of Pittsburgh
341 South Bellefield Avenue
Pittsburgh, PA 15213

Re: James S. Williams T/A
Williams Electric,
Appellant

vs.

School Board of City of
Pittsburgh
No. 85-3160

Dear Mr. Williams and Counsel:

Please be advised that the above-entitled case(s) will be submitted on the briefs,

pursuant to Rule 12(6) of the Rules of this Circuit, with NO oral argument on Tuesday, August 6, 1985.

This means your presence will not be required.

Very truly yours,

SALLY MRVOS, Clerk

By:_____
Linda Minton, Deputy Clerk

lm:rm

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 85-3160

JAMES S. WILLIAMS t/a WILLIAMS ELECTRIC.

Appellant

v.

SCHOOL BOARD OF CITY OF PITTSBURGH

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

(D.C. Civil No. 84-1083)
District Judge: Honorable Hubert I. Teitelbaum

Submitted Pursuant To Third Circuit Rule 12(6)
August 6, 1985

Before: WEIS, HIGGINBOTHAM, and ROSENN, Circuit Judge

JUDGEMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court entered February 11, 1985 be and the same is hereby affirmed.

CostS taxed against appellant.

BY THE COURT,

_____
Weis
Circuit Judge

Attest:

Sally Mrvos

Clerk
Date: August 28, 1985

Certified as a true copy and issued in lieu of a formal mandate on September 30, 1985.

Test:

Chief Deputy Clerk, U.S. Court of Appeals for the Third Circuit

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 85-3160

JAMES S. WILLIAMS t/a
WILLIAMS ELECTRIC,
Appellant

v.

SCHOOL BOARD OF CITY
OF PITTSBURGH

(D.C. Civil No. 84-1083)

SUR PETITION FOR REHEARING

Present: ADAMS, Acting Chief Judge, SEITZ, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, BECKER, STAPLETON, MANSMANN, and ROSENN, Circuit Judges,

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc,

the petition for rehearing is denied.

BY THE COURT,

_____
Weis
Circuit Judge

DATED: September 19, 1985

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JAMES S. WILLIAMS t/a WILLIAMS ELECTRIC, Plaintiff - Appellant	)	
	)	NO. 85-3160
	)	(D.C. Civ. No.
vs.	)	84-1083)
	)	
SCHOOL BOARD OF PITTSBURGH Defendant - Appellee	)	

NOTICE OF APPEAL TO THE
UNITED STATES SUPREME COURT

And now comes the appellant, James S. Williams T/A Williams Electric by and through James S. Williams and files this Notice of Appeal to the United States Supreme Court, from this court's final judgment rendered in this case dated

September 19, 1985 and this court's original judgment rendered on August 28, 1985.

Jurisdiction to appeal to the Supreme Court is conferred under 28 United States Code 1254 and 1257.

The appellant requests that the records in this case be transferred to the Supreme Court under the Federal Rules of Civil Procedure and the rules of the Supreme Court of the United States.

DATED_____1985 _____
JAMES S. WILLIAMS PRO-SE

CC/Robert J. Stefanko, Esquire
Attorney for Defendant
341 South Bellefield Ave.
Pittsburgh, PA 15213

OFFICE OF THE CLERK
SALLY MRVOS
CLERK
TELEPHONE
215-597-2995
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA 19106-1790

October 4, 1985

Mr. James S. Williams
1531 Oberlin St.
Pittsburgh, PA 15206

Re: James S. Williams, etc., Appellant
vs. School Board of City of Pittsburgh, PA

No. 85-3160

Dear Mr. Williams:

This will acknowledge receipt of document entitled "Notice of Appeal to the U.S. Supreme Court" in the above-entitled case. The document was received in the Clerk's Office on October 4, 1985. We have placed your notice of appeal on the docket and in the files of the case in this Court.

If it is your intention to seek review of this Court's order of September 19, 1985, denying the petition for rehearing by filing a petition for writ of certiorari you should timely file same directly with the Clerk of the U.S. Supreme Court at the following address:

Clerk
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543

We have been advised by the Clerk of the Supreme Court that they do not wish the lower Court record forwarded to them until after certiorari has been granted. If certiorari is granted, the Clerk of the Supreme Court will request that the Lower Court record be forwarded directly to him.

Very truly yours,

Sally Mrvos, Clerk

BY: _____
Betty J. Robinson
Deputy Clerk

sa
cc: Robert J. Stefanko, Esq.

Direct Dial 597-3135

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JAMES S. WILLIAMS
t/a WILLIAMS ELECTRIC COMPANY

Plaintiff,

vs.

THE SCHOOL DISTRICT OF THE CITY OF PITTSBURGH,

CIVIL DIVISION

No. GD 83-21258

AFFIDAVIT OF SERVICE

Code 020 - Equity/No Real Estate

Filed on behalf of Plaintiff

Counsel of Record for this Party:

GOLDBERG & KAMIN
Pa. Firm #497

SAMUEL P. KAMIN, ESQUIRE
Pa. I.D. #00707

ROBERT J. GARVIN, ESQUIRE
PA. I.D. #38598

1408 Law & Finance Building
Pittsburgh, PA 15219
(412) 281-1119

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

JAMES S. WILLIAMS t/a WILLIAMS ELECTRIC COMPANY Plaintiff	)	No. GD83-21258
vs.	)	
THE SCHOOL DISTRICT OF THE CITY OF PITTSBURGH Defendant	)	

AFFIDAVIT OF SERVICE

I, ROBERT J. GARVIN, hereby certify that a true and correct copy of Plaintiff's Complaint in Equity was served upon the following counsel of record by hand delivery this 21st day of December, 1983, as follows:

Robert J. Stefanko, Esquire
Solicitor, School District of
the City of Pittsburgh
314 South Bellefield Avenue
Pittsburgh, Pennsylvania 15213

_____
Robert J. Garvin
Attorney for Plaintiff